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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,848	07/28/2003	Victor J. Ortega	25040.0918	5200

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EXAMINER
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BELT, SAMUEL E

ART UNIT	PAPER NUMBER
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3746

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/628,848	ORTEGA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Samuel E. Belt	3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-17 is/are allowed.
- 6) ☒ Claim(s) 18-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wells et al. (US Patent 6,041,709) in view of Yakich (US Patent 4,549,860).

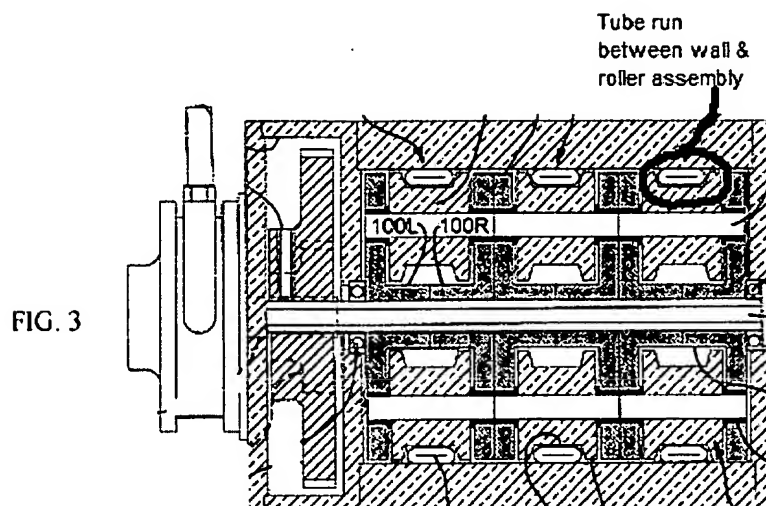
Wells et al. disclose a peristaltic pump for transporting a fluid within a flexible tube having a first end, a middle portion, and a second end, comprising: a roller assembly (Figure 2, item 110) positioned for rotation; a first door (Figure 2, item 82) positioned adjacent to said roller assembly and pivotable about a first direction; and a second door (Figure 2, item 84) positioned adjacent to said roller assembly and pivotable about a second direction; such that said first door and said second door may pivot open and said middle portion of said flexible tube may be positioned about said roller assembly; further comprising a base (Figure 3, items 86, 88, 90) such that said roller assembly may be positioned therein and such that said first door and said second door may be pivotably attached thereto; wherein said base comprises a tube inlet (Figure 2, item 118) and a tube outlet (Not labeled; However, clearly seen in Figure 2) positioned thereon; wherein said base comprises an indent (**See Note 1**) for said roller assembly to be positioned therein; wherein said base comprises a plurality of base

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hinges (Figure 2, item 92) for pivoting said first door and said second door; wherein said first door comprises a wall, said wall positioned adjacent to said roller assembly so as to define a tube run therein (Not labeled; However, clearly seen in Figure 3, **See Note 2**); wherein said second door comprises a tube guide positioned thereon (Figure 2, item 112); further comprising locking means (Figure 2, item 94) positioned thereon for said first door and said second door; wherein said roller assembly comprises a plurality of rollers (Figure 2, item 106); wherein said roller assembly comprises a plurality of discs (Figure 3, items 100L & 100R) so as to mount said plurality of rollers thereon; wherein said plurality of discs comprises a plurality of roller mounting locations (Figure 3, items 108) such that the number of rollers may be modified; wherein said roller assembly comprises a plurality of replaceable rollers (**See Note 3**); further comprising a pump motor (Figure 3, items 128) in communication with said roller assembly; wherein said pump motor comprises a variable speed motor (column 8, line 49+); wherein said base, said first door, and/or said second door comprise acetal resin (column 7, line 43+)

**(Notes:**

- 1.) The bearings (Figure 3, item 96) of the roller assembly are received into base parts 88 & 90 via an indentation.
- 2.) Refer to the figure below.



3.) In regard to claim 14 the Wells et al. device has rollers which are "replaceable".

#### End Notes)

In regards to the claimed ranges of pump motor speed, Wells et al. disclose the aspects of the claimed apparatus as explained above, but fail to teach a variable motor speed between the range of 5 to about 120 rpm and narrower ranges in between.

Yakich teaches a peristaltic pump having a variable speed AC motor that can be varied up to 200 rpm (column 5, line 20+). The configuration of having a variable speed motor allows for better control of the pump flow. The narrower ranges above are regarded as an obvious matter of finding the workable ranges in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Wells et al. device by using the variable speed motor as taught by Yakich in order to deliver the pumping fluid at different rates thereby running the motor

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in a more efficient manner and/or as an obvious matter of finding the workable ranges in the art.

Claims 23 & 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wells et al. (US Patent 6,041,709) in view of Yakich (US Patent 4,549,860) as applied above and further in view of Lowe et al. (US Patent 6,419,466).

Wells et al. and Yakich disclose the aspects of the claimed apparatus as explained in the above with the claimed number of rollers shown in Figures 1 and 2, but fail to teach the method of using coffee or orange juice as a predetermined type of fluid.

Lowe et al. teach a peristaltic pump which can dispense both coffee or orange juice fluids (column 3, lines 16+). The claimed fluids of coffee and orange juice are well known fluids that can be dispensed from a peristaltic type pump as evidenced by Lowe et al. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Wells et al. and Yakich device by using the method as taught by Lowe et al. of dispensing coffee or orange juice.

#### ***Allowable Subject Matter***

Claims 1-17 are allowed.

#### ***Response to Amendment***

The rejections of claims 20, 23, and 24 under 35 U.S.C. 112 2<sup>nd</sup> paragraph are hereby withdrawn in view of applicants amendments.

Applicant's arguments with respect to claims 18-24 have been fully considered but they are not deemed persuasive.

In response to applicant's arguments regarding claim 18, see page 7 of 8 of "Remarks", regarding the method of varying the motor speed and number of rollers on the pump along with the different predetermined fluids, it is being interpreted by the examiner as being method steps which are only dependent on the user because they are not selected by any electronic/mechanical controller. Therefore as long as the structure of the cited references is capable of performing the recited method steps, it will be interpreted that the user will be able to manually select both the motor speed and number of rollers on the pump as well as the fluid to be pumped.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

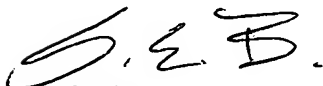
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel E. Belt whose telephone number is (571) 272-7820. The examiner can normally be reached on M-F, 8 - 4:30EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Thorpe can be reached on (571) 272-4444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
SEB

  
ANTHONY D. STASHICK  
PRIMARY EXAMINER